IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 2676 of 2007(S)

OS.348/1998 of FAMILY COURT,KOLLAM
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PETITIONER:

SHAJI VARGHESE,
PUTHEN PURAKKAL VEEDU, AYIRANALLOOR CHERRY,
AYIRANALOOR VILLAGE, PATHANAPURAM TALUK,
KOLLAM.

BY ADV. SRI.JACOB P.ALEX

RESPONDENT:

SINI ZACHARIA,
SINI BHAVAN, ARINALLOOR CHERRY,
THEVALAKKARA VILLAGE, KARUNAGAPPALLY TALUK.

BY ADV. SRI.P. SIVARAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext. P1	:	TRUE COPY OF THE JUDGMENT IN WP(C).16175 OF 2006.
Ext. P2	:	TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN I.A.No. 15833/2006 IN W.P.(C) 16175/2006 DATED 23.11.2006.
Ext. P3	:	TRUE COPY OF THE I.A. 2215/2006 FILED BEFORE THE FAMILY COURT , KOLLAM DATED 25.11.2006.
Ext. P4	:	ORDER IN I.A. 2215/2006 IN O.S. 348/1998 DATED 07.12.2006 OF THE FAMILY COURT, KOLLAM.

/true copy/

P.A. TO JUDGE

KURIAN JOSEPH & K.T. SANKARAN, JJ.

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W.P.(C) No. 2676 OF 2007

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Dated this the 28th February , 2007

J U D G M E N T

Sankaran, J:

Petitioner, who is the first defendant in O.S.No. 348 of 1998 on the file of the Family Court , Kollam was set ex parte in the execution proceedings. That order was set aside on condition that the petitioner shall deposit a sum of Rs. One lakh before the Family Court . Direction to deposit Rs. One lakh was challenged in W.P.(C) No. 16175 of 2006, which was disposed of as per Ext. P1 judgment holding that it is sufficient if the petitioner furnishes security for Rs. One lakh within a period of 15 days from the date of the judgment,viz., 05.10.2006. The petitioner did not furnish security within 15 days from the date of Ext. P1 judgment as the petitioner had not received the certified copy of Ext. P1 judgment . Contending that he could not comply with the direction in the judgment because certified copy was not received, an application was filed as I.A. 15833 of 2006 in Ext. P1 Writ Petition for extension of time to comply with the direction in the judgment. Ext. P2 order was passed in that application granting two days' time. It is stated in Ext.P2 order that if the

petitioner pays the amount within two days, that will be considered as compliance of Ext. P1 judgment. After Ext. P2 order was passed, the petitioner offered to furnish security for Rs. One lakh as per Ext. P3 affidavit. The court below passed Ext. P4 order holding that the petitioner has not complied with the order passed by the High Court and the direction was to deposit the amount not to furnish security. On the ground that Rs. One lakh was not deposited, the court below rejected the prayer of the petitioner to receive the security offered by him.

2. What is meant by Ext.P2 order is that the petitioner was granted two days' time to comply with Ext. P1 judgment. We are of the view that had the petitioner furnished security within two days from the date of Ext. P2 order, that would have been sufficient compliance of the order. Ext.P3 shows that the petitioner has complied with the direction within time. The view taken by the court below that the petitioner should have paid the amount, is not fully correct. Considering the facts and circumstances of the case, Ext.P4 order passed by the court below is set aside. The court below shall dispose of Ext.P3 application in accordance with law.

3. It is submitted by the learned counsel for the respondent that the immovable property in which the petitioner is having fractional right is already under attachment and what is offered as per Ext. P3 is the very

same property. It is made clear that in the facts and circumstances of the case, the petitioner shall offer property other than the property which is already under attachment as security for compliance of Exts. P1 judgment and P2 order. If Ext. P3 relates to the property already under attachment, the petitioner shall file a fresh affidavit and furnish fresh security within a period of two weeks from today.

4. The Family Court, Kollam shall dispose of the suit within a period of four months from the date of receipt of a copy of this judgment.

Writ Petition is disposed of as above.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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KURIAN JOSEPH &
K.T. SANKARAN, JJ.

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Dated this the

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